Appendix "A"

Pertinent section of Chapter 6 of Michigan Code of Criminal Procedure "Examination of Offenders."

"**Sec. 1.** The state and accused shall be entitled to a prompt examination and determination by the examining magistrate in all criminal causes and it is hereby made the duty of all courts and public officers having duties to perform in connection with such examination, to bring them to a final determination without delay except as it may be necessary to secure to the accused a fair and impartial examination." [Michigan Stat. Ann. (Henderson) § 28.919].

"**Sec. 2.** Whenever complaint shall be made to any magistrate named in section one [1], chapter four [4], of this act, that a criminal offense not cognizable by a justice of the peace has been committed, he shall examine on oath the complainant and any witnesses who may be produced by him." [Michigan Stat. Ann. (Henderson) § 28.920].

"**Sec. 3.** If it shall appear from such examination that any criminal offense not cognizable by a justice of the peace has been committed, the magistrate shall issue a warrant directed to the sheriff, chief of police, constable or any peace officer of the county, reciting the substance of the accusation and commanding him forthwith to take the person accused of having committed such offense and to bring him before such magistrate to be dealt with according to law, and in the same warrant may require such officer to summon such witnesses as shall be named therein." [Michigan Stat. Ann. (Henderson) § 28.921].

"**Sec. 4.** The magistrate before whom any person is brought on a charge of having committed an offense not cognizable by a justice of the peace, shall set a day for

examination not exceeding ten [10] days thereafter, at which time he shall examine the complainant and the witnesses in support of the prosecution, on oath in the presence of the prisoner, in regard to the offense charged and in regard to any other matters connected with such charge which such magistrate may deem pertinent." [Michigan Stat. Ann. (Henderson) § 28.922].

"**Sec. 5.** If it shall appear that an offense not cognizable by a justice of the peace has been committed, and that there is probable cause to believe the prisoner guilty thereof, and if the offense be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offense be not bailable by the magistrate, the prisoner shall be committed to jail for trial." [Michigan Stat. Ann. (Henderson) § 28.923].

"**Sec. 13.** If it shall appear to the magistrate upon the examination of the whole matter, either that no offense has been committed or that there is not probable cause for charging the defendant therewith, he shall discharge such defendant. If it shall appear to the magistrate upon the examination of the whole matter, that an offense not cognizable by a justice of the peace has been committed and there is probable cause for charging the defendant therewith, said magistrate shall forthwith bind such defendant to appear before the circuit court of such county or any court having jurisdiction of said cause, for trial." [Michigan Stat Ann. (Henderson) § 28.931].

Appendix "B"

Act 326 Local Acts of Michigan 1883, Chapter XII, §§ 1 and 11, continuing Recorder's Court of City of Detroit and defining its jurisdiction [Comp. Laws Mich. 1948, §§ 726.1, 726.11 (Stat. Ann. Henderson §§ 27.3551, 27.3561)]

"Section 1. The office of recorder and the recorder's court of the city of Detroit shall continue as heretofore created and established, except as herein otherwise provided. The present recorder and associate judge of said court shall respectively continue in office until January ninth [9th], eighteen hundred and ninety-four [1894]." [Comp. Laws Mich 1948 (Stat. Ann Henderson § 27.3551)].

"Sec. 11. The said recorder's court shall have original and exclusive jurisdiction of all prosecutions and proceedings in behalf of the people of this state, for crimes, misdemeanors, and offenses arising under the laws of this state, and committed within the corporate limits of the city of Detroit, except in cases cognizable by the police court of the city of Detroit, or by the justices of the peace of said city, and shall have power to issue all lawful writs and process, and to do all lawful acts which may be necessary and proper to carry into complete effect the powers and jurisdiction given by this act, and especially to issue all writs and process, and to do all acts which the circuit courts of this state, within their respective jurisdictions, may, in like cases, issue and do by the laws of this state: Provided, That this section shall not be construed to prevent the grand jury for the county of Wayne from inquiring into and presenting indictments, as heretofore, for crimes and offenses committed within the limits of said city." [Comp. Laws Mich 1948, (Stat Ann Henderson § 27.3561)].

Appendix "C"

Summary of Michigan's criminal procedure under her 'one-man grand jury system', its history and purposes.

For a clear understanding of the true function of Michigan's one-man grand jury it is essential to consider: *(1st)* her early relinquishment, State Const. 1850, article 6, § 28, of a constitutional guaranty, State Const. 1835, article 1, § 11, that 'no person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury'; *(2nd)* the special proceedings drawn in question here, authorized by law for extraordinary occasions,[1] in which a judge of a court of record constitutes himself a one-man grand jury to investigate suspected criminal offenses by examining material witnesses;[2] and *(3rd)* some of the purposes for which this law has been invoked by the State.

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[1]

We lay aside any consideration of Michigan criminal procedure in due course for magisterial investigation of specific complaints charging offenses not cognizable by a justice of the peace, for the arrest of offenders, for the conduct of a preliminary examination, and for the filing of an information. Mich. Code of Criminal procedure, chapters 6 and 7, Comp. Laws Mich. 1948, § 766.1 et seq. and § 767.40 [Mich. Stat. Ann-Henderson-1954 Rev. § 28.919 et seq. and § 28.980].

[2]

Idem., Chap. 7, §§ 3-6 [Mich. Comp. Laws 1952 Supp. §§ 767.3-767.6b (Stat. Ann. 1954 Rev. §§ 28.943-28.946 (2)].

1

Abolishment of traditional grand jury.

Article 1, § 11, of Michigan's first Constitution (1835), following somewhat the pattern of the 5th Amendment to the Federal Constitution, guaranteed that no person should be held for a criminal offense 'unless on the presentment or indictment of a grand jury', except in specified instances; but the Constitution of 1850, article 6, § 28, and Michigan's present Constitution (1908), article 2, § 19, omitted that requirement, and substituted therefor the 'right to be informed of the nature of the accusation'.[13]

> "In 1859 the regular calling of grand juries was dispensed with and provisions were made for prosecuting offenders by means of informations filed by the prosecuting attorney, although the grand jury was preserved as an institution of the court, to be invoked by the circuit judge if conditions should warrant".[14]

[13]

This section of Michigan's bill of rights also guarantees inter alia 'a speedy and public trial', the right 'to be confronted by the witnesses', 'to have compulsory process', and to 'have the assistance of counsel'.

[14]

The author of this statement observes by way of foot note that the Michigan legislature in 1933 (Act No. 284) provided for a permanent grand jury in every county of 70,000 population and upward, to meet twice in each year; and that in a little over one year, it appeared that the plan was not a success, and the statute was repealed (Act No. 31 Pub. Acts Mich. 1933).

Gillespie's Criminal Law and Procedure, 1st Ed., Vol. 1, § 99, pp. 101-102.

The present law of Michigan[5] prohibits the drawing of grand juries unless the judge shall so direct.[6]

2

The Michigan 'One-man Grand Jury'.

The Michigan Code of Criminal Procedure, chap. 7, §§ 3-6, incl.,[7] reenacts Act. No. 196, Pub. Acts 1917, as amended, the history of which is as follows:[8]

> "After 1859 the 23-man Grand Jury Statute was not repealed, but became an extraordinary instrument

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[5]

Section 7 of chapter 7 of the Michigan Code of Criminal Procedure provides that 'grand juries shall not hereafter be drawn, summoned to attend at the sittings of any court within this state, . . . unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of said court' (Mich. Comp. Laws 1952 supp. 5767.1 [Mich. Stat. Ann. § 28.947]).

[6]

This discretion is seldom exercised, for in Michigan the 'one-man grand jury' has in recent years taken the place once occupied by the traditional 16-member grand jury. People v. McCrea, 303 Mich. 213 (cert. denied, 318 U.S. 783); People v. Roxborough, 307 Mich. 575 (cert. denied 323 U.S. 749; and In re Slattery, 310 Mich. 458 (cert. denied, 325 U.S. 876).

[7]

Mich. Comp. Laws, Mich. Stat. Ann. §§ 28.943-28.946.

[8]

The quotation is from the majority report of a special committee of the Michigan State Bar. September 1947 issue of Michigan State Bar Journal, pp. 55-62, at p. 58.

called into use only occasionally, and then for the purpose of investigating widespread corruption, usually of an official character.

In 1885 a Michigan statute establishing the Detroit police court gave inquisitorial powers to police magistrates of a similar character to the one-man grand jury. In 1915 a Committee on Law Reform of the Michigan State Bar Association recommended the appointment of a Special Committee on Criminal Law and procedure. This Special Committee . . . concentrated its efforts on certain specific improvements in criminal procedure, and recommended a bill for the institution of proceedings for the discovery of crime, which was published as a part of the proceedings of the Michigan State Bar Association Journal in 1916.[8a]

In 1917 this bill was passed by the Michigan Legislature and became the present One-Man Grand Jury Law. It authorizes a single judge to act as a Grand Juror in place of the 23-Man Grand Jury".

The key that unlocks such power is supplied by section 3 of Chapter 7, ante, the provisions of which are published in the petitioners' brief, pp. 26-28 and need not be repeated here.

If upon the judicial inquiry provided in § 3, the judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, 'he may cause the apprehension of such person or persons by proper process and, upon the

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[8a]

Proceedings of the 26th annual meeting of the Michigan State Bar Association, 1916 pp. 101-115, at 103-105.

return of such process served or executed, the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint'.[9]

Witnesses who neglect or refuse to appear upon summons of the one-man grand jury 'or to answer questions . . . . material to such inquiry' may be punished for contempt,[10] though the sentence imposed may in judicial discretion be commuted or suspended if the witness appears and answers such questions [Stat. Ann. § 28.945].

And under the provisions of § 6 of chapter 7 of the code [Stat. Ann. § 28.946], a witness who answers questions which might tend to incriminate him, *is granted full immunity* from prosecution for any offense concerning which he testifies.[11]

3

Purposes for which Michigan one-man grand jury is employed.

It is at least worthy of note that the one-man grand jury

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[9]

Also, if so satisfied, the justice or judge shall report the matter to the proper officials to the end that any public officer so accused may be removed from office. These are all considered to be 'judicial acts'. In re Slattery, 310 Mich. 458; cert. denied, 325 U.S. 876.

[10]

Such a proceeding in contempt is deemed criminal in nature. In re Wilkowski, 270 Mich. 787. See: In re Ward, 295 Mich. 742; In re Cohen, 295 Mich. 748; and In re Slattery, supra.

[11]

This section of the code is in recognition of the state constitutional mandate that 'no person shall be compelled in any criminal case to be a witness against himself' (Mich. Const. 1908, article 2, § 16).

law has been called into play in Michigan only when considered necessary to the public interest, or where it was deemed important to investigate wide-spread corruption in high places. A few examples will suffice:

Thus, in a comparatively early case, a one-man grand jury investigated a rather vicious combination in restraint of trade intrastate.

People v. Butler, 221 Mich. 626.

The law in question was later used to investigate, charge, and convict[12] a former mayor of the city of Hamtramck, high-ranking police officers of that municipality, and the proprietors of houses of prostitution, of a common-law conspiracy[13] to obstruct justice by wilfully and corruptly permitting and allowing them to operate.

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[12]

To say that this state law is used to 'convict', simply means that testimony of witnesses who appeared before the one-man grand jury, and, under compulsion of the fear of punishment for contempt, admitted their own guilt and implicated others, is adduced through the same witness at the trial unless he becomes wholly recalcitrant. The law is thus made an effective instrument for evoking the truth. For, by way of analogy, 'a state may control such situation in accordance with its own ideas of the most efficient administration of criminal justice. The purpose of due process is not to protect an accused against a proper conviction'. Adamson v. California, supra.

[13]

Common-law conspiracies are punishable under § 505 of the Michigan Penal Code (Stat. Ann. § 28.773) which makes it a felony to commit any indictable offense at the common law, 'for the punishment of which no provision is expressly made by any statute' of the State.

People v. Tenerowicz, 266 Mich. 276.

It was employed to investigate, charge, and convict the members of a legislative committee and others who attempted to conduct a recount of votes cast for candidates for state office, of a common-law conspiracy to violate provisions of the State's general election law,

In re Investigation of Recount, 270 Mich. 328;

People v. O'Hara, 278 Mich. 281.

Such a one-man grand jury investigated corrupt practices in Wayne county and charged the prosecuting attorney and his chief investigator, the sheriff and his deputy, together with the operators of houses of ill fame and other illegal enterprises, with a common-law conspiracy to obstruct justice by engaging in a 'protection money' scheme, and the defendants were later convicted,

People v. McCrea, 303 Mich. 213; cert. denied (October Term 1942, No. 651), 318 U.S. 783;

People v. Wilcox, 303 Mich. 287; and cases in sequence.

The same basic conspiracy was involved in a later group of cases where a one-man grand jury indicted and the State prosecuted and convicted the proprietors of gambling enterprises (numbers and mutuel), a former mayor of the city of Detroit and other law-enforcing agents, of a com-

mon-law conspiracy to obstruct justice by means of systematic bribery,

People v. Roxborough, 307 Mich. 575; cert. denied, 323 U.S. 749; and see cases in sequence, including

People v. Ryan, 307 Mich. 610, and *People v. Reading*, 307 Mich. 616.

The same one-man grand jury, investigating corruption in the county of Wayne, charged, and the people convicted police officers of the city of Detroit, the secretary of the mayor of that municipality (People v. Reading, *supra*), and the proprietors of 'hand books', of a common-law conspiracy to obstruct justice by means of 'protection money' or bribery.

People v. Heidt, 312 Mich. 629;

People v. Bartlett, Reading et al., 312 Mich. 648, and cases following in sequence.

Such a grand jury investigation resulted also in the indictment of the mayor of Hamtramck for a conspiracy with other named defendants wilfully and corruptly to assist and enable the maintenance and operation of houses of ill fame and gambling establishments in that city, and thus to obstruct justice. Conviction was reversed for error in the charge of the trial judge,

People v. Kanar, 314 Mich. 242.

And, finally, a one-man grand jury in the county of Ingham (Lansing, the capital) indicted, and a petit jury

convicted a member of the state senate and another of a criminal conspiracy to corrupt the legislature of the State of Michigan.

People v. Delano et al., 318 Mich. 557, cert. den. 334 U.S. 818.